NO. 83-1630

In the Supreme Court of the United States

OCTOBER TERM, 1983

MARY ANN BLACKLEDGE,

PETITIONER

VS.

JOHN G. SCHWEGMANN, JR., ET AL.,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR RESPONDENTS IN OPPOSITION

David Stone
Jo Harriet Strickler
Of
STONE, PIGMAN, WALTHER, WITTMANN & HUTCHINSON
1000 Whitney Bank Building
New Orleans, Louisiana 70130
Telephone: (504) 581-3200

John T. Charbonnet
American Bank Building
New Orleans, Louisiana 70130
Telephone: (504) 522-2990

Attorneys for Respondents
John G. Schwegmann, Jr.,
John F. Schwegmann,
Melba Margaret Schwegmann and
Schwegmann Giant Super Markets, Inc.

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

TABLE OF AUTHORITIES

NO. 83-1630

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

MARY ANN BLACKLEDGE,

PETITIONER

VS.

JOHN G. SCHWEGMANN, JR., ET AL.,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR RESPONDENTS IN OPPOSITION

This case is not remotely worthy of the attention of this Court on certiorari. The case turns on questions of state law. It does not involve any federal question as to which there is a conflict among state or federal courts. The state court did not uphold the constitutionality of any state statute. The case does not meet any of the criteria for granting certiorari stated in 28 U.S.C. §1257(3).

STATEMENT OF THE CASE

This is a "palimony" case. The petitioner, Mary Ann Blackledge, says that one day in 1966 John Schwegmann told her he wanted to "share everything" with her and that she

and property rights is well known. Louisiana's strong continuing interest in the institution of marriage prevents the marriage relationship from being terminable at will. Without court scrutiny and approval, the parties cannot end their marriage relationship, determine custody, finalize property rights or determine support. The state does not have the same interest in or control over the relationship of unmarried cohabitants.

Conferral of quasi-community property rights on unmarried cohabitants would cause the status of property ownership in Louisiana to become chaotic. Marriages, marriage contracts, and divorces are all a matter of public record. A casual or long-term liaison, however, cannot be found on the public records, and may in fact be kept secret intentionally by the participants. The possibility of concurrent liaisons, or liaisons concurrent with an existing community of one or both of the persons involved in the liaison, would make Louisiana property law a tangle of uncertainty. Immense and obvious practical difficulties would result from the granting of implied property rights on the basis of cohabitation, including the problem of defining which relationships would and which would not qualify for quasi-marital "rights", and the problems of determining the extent and nature of such rights and of identifying the assets to which they would apply. These difficulties would compound geometrically in the cases that would inevitably arise involving competing claims of two or more cohabitants (concurrent or consecutive) of the same defendant.

The equal protection clause does not obligate the State of Louisiana to step into these uncertainties, or to consign the institution of marriage to the Victorian relic heap.

C. This Case Presents No Conflict of State Law Involving a Federal Question.

Miss Blackledge asserts in her petition for writ of certiorari that this Court should grant certiorari because of an asserted "conflict" between *Marvin v. Marvin*, 18 Cal.3d 660 (1976) and this case.

In *Marvin v. Marvin, supra*, the California Supreme Court, applying and expanding the law of California, held that an implied contract between non-marital partners should be enforced to the extent that the contract was not explicitly founded on the consideration of unlawful sexual services. The California court also approved the use of the theories of implied contract and quantum meruit in dealing with the property of non-married cohabitors. No aspect of the *Marvin* decision purported to interpret federal law. In every respect the court was interpreting only California law. A "conflict" between California law and Louisiana law involving no federal issue is not grist for this Court.

CONCLUSION

It is respectfully submitted that petitioner has wholly failed to sustain her burden of establishing under Rule 17 that there are special and important reasons why the writ should be granted. The decision below did not involve an important question of federal law as to which a conflict exists. The Court below correctly decided the issue of express contract on a state ground independent of any federal question. This Court should deny petitioner's request for writ of certiorari.

Respectfully submitted,

David Stone
Jo Harriet Strickler
Of
STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
1000 Whitney Bank Building
New Orleans, Louisiana 70130
Telephone: (504) 581-3200

John T. Charbonnet
American Bank Building
New Orleans, Louisiana 70130
Telephone: (504) 522-2990

Attorneys for Respondents
John G. Schwegmann, Jr.,
John F. Schwegmann,
Melba Margaret Schwegmann and
Schwegmann Giant Super Markets, Inc.

TABLE OF CONTENTS

said "okay." She contends that this alleged conversation constituted a "contractual agreement" under which she acquired an ownership interest in all Mr. Schwegmann's property. This would have been a very good deal for Miss Blackledge, since Mr. Schwegmann then owned a chain of supermarkets and other substantial assets, and she had nothing whatsoever. The "contractual agreement" was never reduced to writing, and there were no witnesses to the alleged conversation.

Miss Blackledge lived in Mr. Schwegmann's house for twelve years. She claims that she performed various household duties and took care of Mr. Schwegmann's daughter. She also claims that she advised Mr. Schwegmann on his political career and the management of his grocery stores, helped write editorials for the Schwegmann Supermarkets newspaper advertisements, and gave Mr. Schwegmann investment advice.[1] The parties stopped living together in May 1978. More than a year later, in October 1979, Miss Blackledge filed this lawsuit.

COURSE OF THE PROCEEDINGS BELOW

The petitioner sued John G. Schwegmann, Jr., his children and various corporations seeking ownership of half Mr. Schwegmann's property, damages for breach of an alleged oral contract, and other relief, including recovery on

[1] For present purposes, we forego detailed discussion of those portions of Miss Blackledge's deposition demonstrating that she had no business or financial background or qualifications, and was unfamiliar with the most fundamental business concepts (e.g. did not know the meaning of such terms as "creditor" and "liability"); that she knew surprisingly little about Mr. Schwegmann's business, considering that she lived with him for twelve years and shopped regularly in his stores; and that she could not recall any editorials she had written for Schwegmann advertisements except for a recipe for meatball gravy and an obituary for one of Mr. Schwegmann's dogs.

a theory of quantum meruit. The Louisiana district court granted summary judgment for respondents on all claims made by petitioner except a portion of her claim for recovery under the theory of quantum meruit. The decision of the district court was unanimously upheld by the Louisiana Fifth Circuit Court of Appeal. *Schwegmann v. Schwegmann*, 441 So.2d 316 (La. App. 5th Cir. 1983). The Louisiana Supreme Court unanimously denied petitioner's application for writ of certiorari or review. *Schwegmann v. Schwegmann*, 443 So.2d 1122 (La. 1984).

ARGUMENT

A. The Decision of the Louisiana Courts Rejecting the Petitioners' Claim for Breach of Contract Rests on an Independent State-Law Ground.

The petitioner claims that in 1966 she and John Schwegmann entered an oral contract to pool their assets and share their earnings. The Louisiana courts below held that this alleged contract, even if proved, would have constituted a type of agreement then classified by Louisiana law as a "universal partnership", which could not be valid unless made in writing. La. Civ. Code arts. 2829 and 2834 (repealed by Acts 1980, No. 150). On the basis of this independent state-law ground, the Louisiana courts rejected the petitioner's contract claim.

The petitioner contends that an amendment of Louisiana partnership law, which did not become effective until January 1, 1981, somehow retroactively validated the oral universal partnership that she claims to have entered in 1966, and terminated in 1978. The petitioner made the same argument in the Louisiana courts, without success. The 1981 amendment of the Louisiana partnership law applies

prospectively to existing partnerships, but does not purport to have retroactive effect. More to the point, the issue of the retroactivity of the 1981 changes in the Louisiana partnership law is, purely and simply, a matter of state law, involving no constitutional or other federal question.[2]

The petitioner also suggests that the Louisiana court's rejection of her contract claim "appears to be predicated, albeit tacitly, on La. Civil Code Article 1481", which prohibits certain *gifts* between persons who cohabit without benefit of marriage—a provision that the petitioner attacks as being violative of the United States constitution. But Article 1481 has nothing to do with any issue presented to or decided by the Louisiana courts in this case, and there is not the faintest suggestion in the opinions below of reliance on that provision. Article 1481 deals only with donations, and is irrelevant to the partnership and contract principles that are dispositive of the petitioner's claims. The issue of the constitutionality of Article 1481 is a bogus issue, one that is not raised by this case.

B. The Equal Protection Clause Does Not Require a State to Confer Community Property Rights on Unmarried Cohabitants.

Under Louisiana law, property acquired by either spouse during marriage, other than by gift or inheritance, is community property, in absence of a marriage contract. Miss Blackledge, under a theory of "implied" contract, argues in effect that the law of Louisiana should also impose a form of community property regime upon unmarried cohabitants, by implying rights of one cohabitant in the

[2] The courts below also held, as an alternative and independent ground, that the alleged oral contract was meretricious and therefore invalid under Louisiana law.

property of the other. Once again attacking Article 1481 of the Louisiana Civil Code, Miss Blackledge argues that Louisiana law makes an impermissible distinction between business partners who engage in sexual relations and those who do not.

The petitioner's argument reflects a misunderstanding of the opinions below. In the first place, Article 1481, as noted above, deals only with *gifts* to concubines, and has nothing to do with this lawsuit. In the second place, with respect to the issue of implied contract, the controlling distinction is not between persons who have sexual relations and those who do not, but between persons who are married to each other and those who are not. If Mary Blackledge and John Schwegmann had *not* had sexual relations, her implied contract claim would nevertheless have been rejected. If, however, the parties had been married, she would be entitled to her interest in the assets of the community.[3]

Louisiana's differentiation, for purposes of the community property laws, between those who are married and those who are not does not violate the equal protection clause. This classification is not "suspect" and serves a compelling governmental interest. It is the public policy of the State of Louisiana and every other state to encourage the institutions of marriage and the family.

Marriage is a matter of choice between the partners, and the fact that marriage imports special legal obligations

[3] It should be noted that the decision below, while refusing to imply rights in Mr. Schwegmann's *property*, did hold that Miss Blackledge may recover in quantum meruit uncompensated business services, rendered separate and apart from the relationship of concubinage.